



VIA ECFS

January 24, 2005

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

RE: PrairieWave Telecommunications, Inc.
Access Charge Reform, CC Docket No. 96-262
Notice of *Ex Parte* Presentation

Dear Ms. Dortch:

On November 12, 2004, PrairieWave Telecommunications, Inc. ("PrairieWave") filed for a waiver of the Commission's CLEC access charge rules 61.26(a)(6), 61.26(b) and 61.26(c) ("Petition"). In a notice released on November 24, 2004 (DA 04-3652), the Commission established a procedural schedule whereby interested parties filed comments by December 17, 2004 and reply comments by January 7, 2005. Three companies, but not Frontier Communications of Minnesota, Inc. ("Frontier"), filed comments by the December 17th date in opposition to some or all of the PrairieWave petition. Frontier filed reply comments by the January 7, 2005 deadline with comments in opposition to the Petition raising issues that PrairieWave did not have a fair opportunity to address in its reply comments also filed on January 7th. PrairieWave submits these *ex parte* comments in accordance with 47 C.F.R. § 1.1206(b).

Competitive Advantage over the Competing ILEC

Frontier is the ILEC competitor in the towns indicated in the first paragraph of its reply. As demonstrated in Exhibit C to the PrairieWave Petition, the communities are among the smallest of the rural areas served by PrairieWave with populations ranging from 225 (Currie) and 270 (Lake Wilson) to 2,072 (Slayton) and 11,283 (Worthington).

Frontier argues that allowing PrairieWave to charge interstate access rates in excess of the ILEC rate puts Frontier, the ILEC, at a competitive disadvantage. The logic of this is difficult to fathom. Frontier's interstate access rate is a cost-based rate. Admittedly, it is an average cost rate, but a cost-based rate nevertheless.¹ How

¹ Frontier is a subsidiary of Citizens Communications Inc. ("Citizens"). Citizens purchased the Frontier exchanges where PrairieWave competes with Frontier in 2001. PrairieWave began offering competitive

PrairieWave's recovery of its legitimate costs allows PrairieWave to subsidize its local service rates in competition with Frontier is not immediately apparent. Unlike PrairieWave, Frontier is fully compensated for its network costs.²

This is especially true when you consider the unbelievably low rates Frontier charges for its local service in the communities where PrairieWave is the competitor. The basic residential rate is \$9.08.³ The basic business rate is \$15.06.⁴ By comparison, Qwest rates for towns of similar size in the same area⁵ are \$13.96 for basic residential service, and \$34.61 for business service.⁶ These are basic rates and do not include Minnesota Public Utilities Commission ("MNPU") approved EAS additives and other governmentally imposed surcharges or LNP-type cost recovery mechanisms. On the other hand, PrairieWave's tariffed basic residence and business rates in Frontier exchanges are \$9.70 and \$17.50, respectively.⁷

The low basic rates are made even lower by one-on-one special offers to customers. Attached as Exhibit A is a letter written to the Minnesota Department of Commerce ("DOC"), which in concert with the Minnesota Public Utilities Commission ("MNPU"), oversees the regulation of telecommunications service and service quality in Minnesota. PrairieWave raised two issues: (1) the reasonableness of the termination liability assessment ("TLA") for early termination of term contracts, and (2) the anticompetitive nature of discriminatory pricing offers to individual customers. The DOC opened a docket on the TLA issue,⁸ but declined to pursue the pricing. What the

basic telephone service using its own facilities in 1999 and 2000, before the exchanges were purchased. According to Citizens' Form 10-K for 2003, available on the Citizens' website (www.czn.com), it is the "dominant" ILEC in the markets it serves with 2.4 million access lines in 23 states with over \$2 billion in revenues.

² It is important to note that Frontier does not deny the asymmetric impact of the application of incumbent rates when these rates are determined using average costs, nor does it deny PrairieWave's right to just and reasonable compensation for the use of its network by third parties. Neither does Frontier deny any of PrairieWave's analysis of the distortive market signals that result and the harm to further competitive entry. Further, Frontier does not claim that PrairieWave's costs are excessive, nor did it bother to review the cost study submitted with the Petition. Like the other parties filed comments, Frontier's analysis not only distorts the market structure in the communities where it competes against PrairieWave, it fails to engage the key substantive issues raised by PrairieWave in its Petition. No commenter in these proceedings asserts, let alone proves, that the application of incumbent rate caps provides PrairieWave with just and reasonable compensation for the use of its network, which in the end is the only basis for denying PrairieWave's request.

³ Frontier Communications of Minnesota, Tariff No. 1, *Basic Local Exchange Service*, Section 3.3.3 (Worthington) (effective Aug. 1, 2003). As discussed *infra* Frontier has deaveraged its rates by exchange to compete with PrairieWave. Worthington is cited because it is pertinent to the discussion in this communication.

⁴ *Id.*

⁵ Luverne, Marshall, Pipestone, and Tracy.

⁶ Qwest Corporation, *Exchange and Network Services Tariff*, Section 5.2.4 (effective Sep. 29, 2000).

⁷ PrairieWave Telecommunications, Inc., *Exchange and Network Services Tariff*, Section 5.2.1 (effective May 1, 2003).

⁸ MNPU Docket No. P405/C-03-453. Subsequent negotiations among the DOC, Frontier and PrairieWave resulted in a mutually agreeable revision of the Frontier tariff and contracts relating to the TLA.

letter and the customer offer exhibit clearly demonstrate is an offer resulting in a monthly price for basic local exchange service of \$2.59.⁹

Such a low local line rate for a business account raises two thoughts. First, Frontier either has an unbelievable minimal cost structure, or it engages in massive cross-subsidy to significantly undercut PrairieWave's local service price. The Citizens' 2003 Form 10-K states that Citizens acquired slightly over 1 million access lines for \$3,373 million in cash.¹⁰ Citizens paid about \$3,373 per access line in 2001 for its Frontier acquisition, hardly a low-cost deal. Any claim of improper cross-subsidy by PrairieWave in the affected Frontier exchanges is hardly credible.¹¹ To the contrary, it is Frontier that is engaging in cross subsidization from its noncompetitive markets to the markets where it competes against PrairieWave.

Second, the Frontier behavior completely destroys the credibility and applicability of the Commission's rationale that PrairieWave can recover its costs from its customer using charges other than access charges – the purported “backstop.”¹² The Commission's market analysis and backstop proposition work neither in theory nor in real life. PrairieWave has no ability to recover its legitimate access costs through access charges or through any other cost-recovery mechanism. Meanwhile the incumbent recovers its access costs and buoyed by that cost recovery is able to significantly subsidize lowering its local rate to the point that a competitor like PrairieWave has no way to compete.

Service to the More Rural High-Cost Customer

PrairieWave would love to serve the rural agriculture residential and business community that resides outside of the town corporate limits, and in some limited cases it does. Over the past 7 years PrairieWave has deployed and tested several wireless platforms using unlicensed spectrum trying to bring competitive local exchange and broadband service to the farm.¹³ For both technical and financial reasons none of the efforts have been successful, but PrairieWave is currently planning to deploy a system in

⁹ The quote is clearly made to a business, but where the undiscounted 3-year-term line rate (\$7.29 v. the tariffed month to month rate of \$15.06) comes from is uncertain. If it is really a residential rate, Frontier's anticompetitive behavior has a different twist that PrairieWave failed to note in its communications and subsequent conversations with the DOC.

¹⁰ Citizens Communication Company, *Form 10-K, Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, for the year ended December 31, 2003*, at 2.

¹¹ In 1999 Frontier filed with the MNPUC to deaverage its local service rates in Worthington (residential service in Docket No. P-405/AM-99-914 and business service in Docket No. P-405/AM-99-1712), which is where the offer in Exhibit A was made, and in several other exchanges, because of competition from DTI (nka PrairieWave). To obtain MNPUC approval, Frontier had to assure the MNPUC that the proposed deaveraged rate (\$19.95 for business) covered its average total-service long run incremental costs (“TSLIRC”) generated by the HAI model. The \$2.59 line rate would hardly be in the TSLIRC ballpark.

¹² *Access Charge Reform*, Seventh Report and Order, CC Docket No. 96-262, 16 FCC Rcd 9923 (2001) (“CLEC Access Order I”) ¶ 39; *Access Charge Reform*, Eighth Report and Order, CC Docket No. 96-262, 19 FCC Rcd 9108 (2004) (“CLEC Access Order II”) ¶ 58.

¹³ In 2000, PrairieWave requested and received from the Commission a temporary waiver Section 15.247(h) of the Commission's rules to utilize coordinated frequency hopping as a part of its wireless service. The waiver expired on March 9, 2004.

South Dakota as part of an ETC application it filed on January 20, 2005.¹⁴ If PrairieWave is successful in this effort, both legally and technically, it could seek ETC status in its other service areas.

However, assuming that Frontier is correct that these more rural areas are a higher cost area than the areas in town, the current Commission market regime denying PrairieWave legitimate cost recovery, and the financial cushion that gives companies like Frontier to charge \$2.59 line rates, the chances that PrairieWave can find ETC status to be financially feasible are nonexistent.¹⁵ Further, this assertion provides additional support for PrairieWave's primary claim - the use of averaged incumbent access rate caps results in unfairly low interstate access rates in high cost rural markets.

The competitive situation in the Frontier exchanges makes approval of access rates justified by the filed cost study even more imperative. We urge the Commission to grant the requested waiver for cost-based access rates.

In the interest of full disclosure, PrairieWave and the city of Sioux Falls have signed an OVS License effective January 19, 2005.

Sincerely,

/s/ William P. Heaston
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cc: Victoria Schlesinger, WCB, via e-mail at Victoria.Schlesinger@fcc.gov
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Kevin Saville, Frontier Communications of Minnesota, Inc.

¹⁴ The filing is for the contiguous wire centers of Centerville and Viborg. DTI filed a similar application in 1998 (SDPUC Docket No. TC98-111), but it was denied because DTI could not serve the entire study area. The affected ILEC has several other noncontiguous wire centers, one of which is several hundred miles from the Centerville/Viborg wire centers. That result effectively chilled any further ETC designation attempts anywhere until the recent flurry of wireless carrier decisions allowing service area redesignations. See e.g. *In the Matter of Federal-State Joint Board on Universal Service Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 1563 (2004) ("*Virginia Cellular*").

¹⁵ The Commission knows that ETC designation is sought to obtain high-cost funding for serving those areas. To the extent that Frontier is not eligible for such high cost funding in its service area, or the funding is minimal, there is no incentive for PrairieWave to seek ETC designation. PrairieWave does provide Lifeline and Link-up discounts in Frontier exchanges without ETC designation and without reimbursement - that is PrairieWave's commitment to its rural customer base.